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PATENT

#10/Petition  
W/ff Recd.  
N.C.

Our Reference: SEA-147-D

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Thomas R. Tudor and William C. Paetow II  
Serial Number: 10/023,333  
Filing Date: December 12, 2001  
Examiner/Group Art Unit: Fetsuga, Robert M./3751  
Title: VISCOUS MATERIAL DISPENSE SYSTEM

**PETITION FROM REFUSAL TO ENTER AN AMENDMENT**  
**PURSUANT TO 37 C.F.R. §1.127**

Assistant Commissioner for Patents  
Washington, DC 20231

Sir:

In the Office Action dated September 16, 2002, the Examiner issued a final rejection of claims 1-6, 8-18, and 20-22 of the present application. The Examiner asserts that new matter was added to the claims 1, 4, 9, and 14 under 35 U.S.C. §112, first paragraph. The Examiner specifically rejects the terms "an inner conical nozzle surface extending from an annular shoulder" and "monolithic" as being unsupported in the specification. Figures 2, 8, and 9 clearly show an inner conical nozzle surface 24e extending from an annular shoulder 24d, a monolithic tube 24, and a monolithic nozzle insert 16 with annular shoulder 16b. As such, support is provided in the original application for use of the term "monolithic" as set forth in the claims as amended.

M.P.E.P. §608.04 states that "no amendment may introduce new matter into a disclosure of the application, however, in establishing a disclosure, applicant may rely not only on the specification and the drawing that was filed, but also on the original claims if the content justifies it". M.P.E.P. §2163.06 states "if an applicant amends or attempts to amend the abstract, specification, or drawings of the application, an issue of new matter will arise if the content of the amendment is not described in the application as filed. Stated another way, the information contained in any one of the specification, claims, or drawings of the application as filed may be added to any other part of the application without introducing new matter".

An Amendment After Final was submitted to respond to the claim rejections based on the Examiner's assertion that the prior amendment raised new

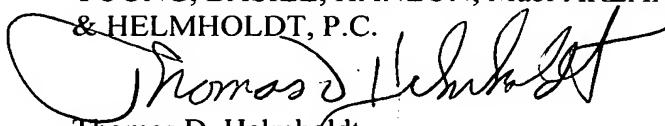
matter. The amendment revised the specification to be consistent with the drawings by adding "an inner conical nozzle surface 24e extending from an annular shoulder 24d" and "monolithic single piece" to the description of the insert 16, and to the description of the tube member 24 as shown clearly in Figs. 8 and 9. On December 31, 2002, the Examiner issued an Advisory Action refusing to enter the proposed Amendment After Final because "the term monolithic is not found in the noted drawing figures." Applicant's attorney notes that the drawing is not required to include the word "monolithic" as stated by the Examiner, rather, it is only required to illustrate or show the "monolithic" structure.

The present Petition from Refusal to Enter an Amendment Pursuant to 37 CFR §1.127 requests entry of the Amendment After Final Pursuant to 37 CFR §1.127 and M.P.E.P. §714.13 filed on December 16, 2002. It is submitted that the Amendment After Final should be entered because it does not raise new issues requiring further consideration and/or search and the amendment simplifies the issues on appeal. Amending the specification to be consistent with the drawings showing a monolithic, single piece, insert 16 is not new matter and therefore does not raise new issues requiring further consideration and/or search. It is submitted that the Examiner's refusal to enter the After Final Amendment in the present application is improper. The Commissioner is requested to instruct the Examiner to withdraw his refusal to enter the Amendment After Final filed on December 16, 2002, as set forth in the Advisory Action dated December 31, 2002, for purposes of appeal or to issue a Notice of Allowance after entry of the proposed claim amendments.

A check for the petition fee of \$130.00 is enclosed with this Petition.

Respectfully submitted,

YOUNG, BASILE, HANLON, MacFARLANE, WOOD  
& HELMHOLDT, P.C.

  
Thomas D. Helmholtz  
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Dated: February 3, 2003

TDH/MDF/rjn/amt/p



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Title: VISCOUS MATERIAL DISPENSE SYSTEM

**CERTIFICATE OF MAILING AND TRANSMITTAL LETTER**

Box: AF- FEE  
Assistant Commissioner of Patents  
Washington, D.C. 20231

Sir:

Transmitted with this document is a Petition from Refusal to Enter An Amendment Pursuant to 37 C.F.R. §1.127 and a return receipt, postage prepaid postcard in the above-identified application.

A check in the amount of \$130.00 is attached.  
Please charge any deficiency or credit any excess in the enclosed fees to Deposit Account Number 25-0115.

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Assistant Commissioner of Patents, Washington, D.C. 20231, on February 3, 2003.

A handwritten signature in black ink, appearing to read "Thomas D. Helmholtz".

Thomas D. Helmholtz  
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